COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(1) Appeal from order No. 276 of 2003

United India Insurance Co. Ltd. …… **Appellant.**

Versus

Smt. Neema Devi
and others. ….. **Respondents.**

(2) Appeal from order No. 277 of 2003

United India Insurance Co. Ltd. …… **Appellant.**

Versus

Smt. Mohani Rajwar
and others. ….. **Respondents.**

(3) Appeal from order No. 273 of 2003

United India Insurance Co. Ltd. …… **Appellant.**

Versus

Smt. Tanuja Pande
and others. ….. **Respondents.**

(4) Appeal from order No. 274 of 2003

United India Insurance Co. Ltd. …… **Appellant.**

Versus

Smt. Geeta Pant
and others. ….. **Respondents.**

(5) Appeal from order No. 295 of 2003

United India Insurance Co. Ltd. …… **Appellant.**

Versus

Hemant Singh Bisht
and others. ….. **Respondents.**

(6) Appeal from order No. 297 of 2003

United India Insurance Co. Ltd. …… **Appellant.**

Versus

Manohar Lal
and others. ….. **Respondents.**

(7) Appeal from order No. 298 of 2003

United India Insurance Co. Ltd. …… **Appellant.**

Versus

Rakesh Kumar
and others. ….. **Respondents.**

(8) Appeal from order No. 95 of 2003

United India Insurance Co. Ltd. …… **Appellant.**

Versus

Hemant Singh Negi
and others. ….. **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

All these appeals arise out of the same motor accident and similar questions for determination are involved in both the appeals, therefore, all the appeals are being decided by this common judgment.

These appeals have been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 11-06-2003, passed in M.A.C. T. Petition No. 65 of 2002, Smt. Neema Devi and others Vs.

U.P.S.R.T.C. and others, M.A.C.T. Petition No. 165 of 2001, Smt. Mahoni Rajwar and others Vs. U.P.S.R.T.C. and two others, M.A.C.T. Petition NO. 70 of 2002, Smt, Tanuja Pande & others Vs. Dr. B.L.Narang & others and M.A.C.T. Petition No. 184 of 2001, Smt. Geeta Pant and others Vs. Dr. B.L.Narang & others, by the Motor Accident Claims Tribunal/ District Judge, Nainital (***hereinafter referred to as the Tribunal***), whereby the learned Tribunal, has awarded compensation in favour of the claimants for different amounts along with simple interest @ 6% per annum as against the appellant, as mentioned in the impugned judgment and awards.

In A.O. No. 295 of 2004 arising out of M.A.C. No. 42 of 2002, Hemant Singh Bisht Vs. Brij Lata & others, A.O. No. 297 of 2004, arising out of M.A.C. No. 133 of 202, Manohar Lal Arya Vs. Brij Lata & others, and A.O. No. 298 of 2004, arising out of M.A.C. No. 139 of 2002, Rakesh Kumar Vs. U.P.S.R.T.C. & others, the M.A.C.T./Addl. District Judge, II F.T.C. Nainital has awarded compensation in favour of the claimants-injured as against the appellant-Insurance Company as mentioned in impugned judgment and awards dated 30-6-2004, 29-6-2004 and 1-7-2004 respectively.

In A.O. No. 95 of 2004, arising out of M.A.C. No. 49 of 2002, Hemant Singh Negi Vs. U.P.S.R.T.C. and others, the Motor Accident Claims Tribunal/Addl. District Judge, I F.T.C., Nainital, has awarded compensation to the injured-claimant vide impugned judgment and award, dated 12-5-2004, against the appellant.

Aggrieved, the Insurance Company has come up in appeal with a prayer to set aside the impugned judgments and awards mainly challenging the award on the quantum of compensation and on the point of negligence by invoking the provisions of Section 170 of the Act.

Brief facts of the case are that Vijay Kumar, Rajendra Singh Rajwar, Manish Pande, Har Nath Pant (***the deceased***) and the injures-claimants and others, who were traveling in the bus, sustained injuries and several persons including the deceased succumbed to their injuries in a motor accident on 1-10-1001 due to rash and negligent driving by the driver of the Maruti Car involved in the accident, whereby the offending car hit bus no. UAB-4032 resulting into grievous injuries and consequent death of the deceased persons. Hence the claim petitions were field by the claimants, who are dependents and legal heirs of the deceased or the injured themselves. The Opposite Parties U.P.S.R.T.C., owner of the Maruti Car and appellant-United India Insurance Company, the insurer of Maruti Car, contested the claim petition by filing separate written statements. The learned Tribunal framed necessary Issues in the case. After considering the evidence of the parties, the learned Tribunal has come to the conclusion that the motor accident resulting into grievous injuries and death of the deceased and injuries to the injured-claimants has occurred due to rash and negligent driving by the driver of the Maruti Car No. UP 02 D/5822 alone and the accident was not the result of rash and negligent driving on the part of bus driver. The Tribunal has ultimately decreed the claim petitions for compensation as mentioned in the impugned judgment and awards along with interest @ 6% per annum in favour of the claimants as against the appellant-Insurance Company.

We have heard learned counsel for the appellant, Mr. Naresh Pant as well as learned counsel for the claimant-respondents Mr. Siddhartha Sah (in A.O. No. 276 of 2003) and Mr. Ajay Singh Bisht (in A.O. No. 277 of 2003) and have gone through the entire material on record including the impugned judgment and awards. On the request of the learned counsel for the appellant-Insurance Company, other six appeals detailed above have also been taken up for hearing on merit along with these appeals.

The learned counsel for the appellant-Insurance Company has submitted before us that in the present cases there was collusion between he claimants and the driver and the insured. The learned counsel for the appellant has tried to invoke the provisions of Section 170 of the Act in the memo of appeal and has, therefore, submitted that the appellant has a right to challenge the impugned judgment and awards on all the grounds including on the point of negligence and quantum of compensation. The submission made on behalf of the appellant before us is totally misconceived and not tenable for the following reasons.

It is most significant to mention here that the grounds of challenge available to the insurer-appellant have been enumerated in sub-Section (2) of Section 149 of the Act and no other ground is available to the Insurance Company. No permission under Section 170 of the Act has been sought before and granted by the Tribunal to the appellant to contest the case on the grounds available to the insured or the person against whom claim has been preferred. Section 170 of the Motor Vehicles Act deals with impalement of insurer in certain cases. On a careful perusal of the said provisions of law, we are not inclined to accept the contentions raised on behalf of the insurer-appellant, because under the Act, the insurer has no right to challenge the judgment and award passed by the learned Tribunal except on the grounds as enumerated under sub-Section (2) of Section 149 of the Motor Vehicles, Act, 1988. The law provides that appeal by the insurer can be field on limited grounds and the grounds of challenge cannot be enlarged. Moreover, it has not been shown to us as to there is collusion between the claimants and the driver or the owner of the vehicle. In order to avail the right to contest the proceedings on all the grounds available to the insured or the person against whom the claim is made, there ought to have been finding not the point of collusion by the Tribunal. But in the cases under appeal, the position is not so. We are supported in or view by the Apex Court judgment in the case of ***"United India Insurance***

Co. Ltd. vs. Jyotsnaben Sudhirbhai Patel and others" [2003] 7 S.C.C., 212].

So far as the contention of the appellant challenging the findings of the Tribunal on the point of negligence or contributory negligence and the quantum of award is concerned, we are of the consistent view that the Insurance Company has no right to challenge the findings f of the Tribunal on these counts in appeal under Section 173 of the Act. We are fortified in our view by the Apex Court judgment in the Case of ***"National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others" [(2002) 7, Supreme Court Cases, 456].*** IN that case, it has been observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".*** Thus, in view of the law laid down by the Apex Court reported in ***(2002) 7, S.C.C. 456 (supra),*** which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

Ultimately, we are of the view that the present appeals are devoid of merit and must fail.

All these appeals are dismissed. The judgment and award, under appeal, are upheld. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned, for being paid to the claimants.

01-09-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**

RCP